

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
16/11/2012	
DATE	SIGNATURE

16/11/12
CASE NUMBER: 40439/2012

In the matter between:

CEDRIC ELDRID PUCKRIN
SONIKA MENTZ

1st Plaintiff / Applicant
2nd Plaintiff / Applicant

And

HACJ ACCOUNTING SOFTWARE
SERVICES (PTY) LTD
HENDRIK ANDRE COETZEE

1st Defendant /Respondent
2nd Defendant/Respondent

JUDGEMENT

NKOSI AJ:

1.] This is an application for Summary Judgement by the plaintiffs against the second defendant for advocates fees, in the amount of : Claim 1 – R116 480,00 in respect of first plaintiff and claim 2 R108 500,00 in respect of the second plaintiff.

2.] Summons were duly served on the 1st defendant on 16 July 2012. First defendant did not enter an appearance to defend. Service was effected in terms of Rule 4 (1) (a) (v).

3.] The second defendant could not be served at 202 Murryfield, 16 Corlett Drive, Illovo Johannesburg and the occupant of the premises informed the sheriff that the second defendant had moved.

4.] It must be mentioned that the first defendant had left his registered address and premises were locked without a forwarding address or notice of change of registered address.

5.] Second defendant was personally served with the combined summons at 7 Ouzerust Avenue Hartenbos Mossel Bay Western Cape on 5 September 2012.

6.] The second defendant served his Notice of Intention to Defend on 18 September 2012.

7.] First and second plaintiffs served and filed their Application for Summary Judgement on the 3rd of October 2012. The initial date of hearing being 1st November 2010.

8.] Second defendant served its affidavit resisting Summary Judgement received by the Registrar on 30 October 2012. The late filing of the affidavit having been condoned after an application from the bar and was not opposed by the plaintiff's counsel.

9.] Plaintiffs claim is based on the amount of R116 280,00 and R108 500,00 for professional fees arising from the plaintiff's legal representation to the first and second defendants in the North Gauteng Court following a brief by Wilkens Attorneys who were the first and second defendants attorneys of record at the time.

10.] The professional services rendered to the defendants dates back to 24 April 2010 to 29 April 2012. The fees remained unpaid ever since. The fees claimed were certified by the Fee Enquiry Committee of the Pretoria Society of Advocates on 6 April 2011.

11.] Second defendant seeks to oppose the application for Summary Judgement. It was his argument, through counsel, that it is trite that Summary Judgement is a drastic remedy before reaching the trial stage;

11.1 Second defendant does not have to prove his defence but to satisfy the court that he has a bona fide prima facie defence. The test is not too high as compared to proof on a balance of probabilities.

11.2 The prima facie defence must constitute an answer to the plaintiff's claim.

11.3 Counsel confirmed that he is only acting on behalf of the second defendant who wanted to be given an opportunity to except to plaintiff's claim for lack of compliance with Rule 18(4) and (6) of the Uniform Rules of Court in that:

(i) They lack the necessary averments to sustain any cause of action against the second defendant; and

(ii) vague and embarrassing, on the ground that:

a.) the plaintiff's claims are founded upon an agreement that the parties to which have not been identified with sufficient particularity more particularly, the plaintiff's have failed to plead whether the agreement was entered into between:

(i) The plaintiff's and the first and second defendants represented by Judy Wilkens for Wilkens Attorneys; or

(ii) The plaintiffs and the first and second defendants represented by Judy Wilkens form Wilkens Attorneys.

b.) which have not been set forth with any particularity regarding:

(i) the date of conclusion of such agreement (acceptance of brief);

(ii) whether such agreement, in particular:

- the instruction
- the acceptance thereof
- was it oral or in writing

c.) failed to plead that it was a term of the agreement relied upon that:

(i) the first and second defendant would be liable:

- towards the plaintiffs as opposed to Wilken Attorneys for the amounts claims;
- to pay the amounts to the first and second plaintiffs

d.) The first and second defendant would be liable jointly and severally liable, the one paying the other to be absolved, for payment of the sum of:

- R116 280,00 to the first plaintiff
- R105 500,00 to the second plaintiff

Base on these deponents to the affidavit in support of the application for Summary Judgment purports to verify an excipiable cause of action; and therefore the application for Summary Judgement should be dismissed.

12.] It is admitted that, as a ground of his defence, the first defendant duly represented by second defendant instructed Wilkens Attorneys for professional services and while carrying on her professional duties Wilkens Attorneys engaged and briefed counsel first plaintiff and second plaintiff and correspondent attorneys Savage Jooste in Pretoria:

(a) It is not denied that reasonable fees to her services will be paid and inclusive of disbursements specifically agreed and authorised by the first defendant.

(b) Pursuant to the instructions Wilkens Attorneys instructed Savage Jooste as correspondents and briefed first and second Plaintiffs as counsel in the proceedings.

13.] First Defendant authorized an amount of R42 500,00 in respect of first plaintiff and R20 000,00 in respect of second plaintiff for the services to be rendered by them.

13.1 In the finalization of the matter, which took two days, Wilkens rendered an invoice of R135 000,00 in respect of her fees and "advocates" (sic) no names attached.

The first defendant refused to pay.

13.2 The amount mentioned in paragraph 13 above was not paid either.

No reason was advanced as to why this amount was not paid at least.

14.] Second defendant argued that Wilkens Attorneys instituted an action against first and second defendant in South Gauteng High Court for payment of her invoices rendered in the proceedings by first and second plaintiffs:

14.1 Second defendant argues that this is a duplication of claims and have defended the Wilkens action. I must just indicate that we have not been favoured with the copies of this South Gauteng High Court proceedings nor being informed of the status of the case today let alone the particulars of the claim to establish whether it is a duplicate claim or not.

15.] In the amplification of his denial second defendant denies ever discussing the issue of fees with the first and second defendant nor ever contracting them in respect of fees or any other issue and that he never personally bound himself for the fees due to the plaintiff's and Wilkens Attorneys. He further denied receiving any invoice from the plaintiffs.

16.] Plaintiffs argued, through counsel, that the nature of the relationship between attorney, client and advocate has been accepted and approved as set out in the decision of Bertelsman v Per 1996 (2) SA 375 T at 380:

It was held that:

- an advocate has only one client and that is the litigant for whom he acts;
- it remains open to counsel to sue his client;
- the attorney acts as the agent of the client when instructing counsel.

This decision was also confirmed in *Serrurier and Another v Korzia & Another* 2010 (3) SA 166 W.

17.] It is common cause that:

- a.) Second defendant was a director of the first defendant at the time when professional services were rendered to them;
- b.) The first defendant was represented by the second defendant in instructing Wilkens Attorneys as attorney of record;
- c.) Second defendant was a party to the proceedings and was there in court for the whole duration of the case which lasted two days;
- d.) Even though the first defendant authorized to pay at least R62 500,00 – nothing was paid to date;
- e.) The case was successful and the first and second defendant were awarded costs on attorney and client scale. (Not denied.)

18.] The second defendant can not start to deny the mandate and authority given to his attorneys of record.

19.] Services were rendered in his presence and did not object to such legal representation.

20.] The second defendant as the director of his company was the only warm body to represent the corporate first defendant. The decisions taken and implemented on behalf of the first defendant by himself. He cannot deny that and therefore estopped from denying his authority as director and only executive of the first defendant.

21.] On the issue of summons being open to exception, it appears that the summons have clearly spelt out the cause of action and the parties involved and therefore this argument has no merit.

22.] On the issue of a duplicate claim one is left to wonder if it really happened:

- no copies of summons or of the proceeding were shown to court.
- if really, there is such claim and is a duplicate , then the Defendant has a remedy , (1.) to stay
(2.) dilatory plea of lis pendens
- I could not find any duplication of claim here.

23.] I now turn to the fact that a denial only with no positive facts can not stop an application for Summary Judgement.

Defendant has to come out clear with the bona fides that he is not trying to delay the proceedings unnecessary

- (1.) Service could not have been done earlier due to the fact that the 1st and 2nd Defendant left their registered addresses.
- (2.) The 2nd Defendant had to be served in Cape Town.

24.] The second defendant has just indicated that he is no longer a director of the second defendant:

- Who is left to guess as where did the first defendant moved to?
- Where is their present registered addresses?
- Why were creditors not informed that by the closing down or moving to another place?
- Second defendant can not prove as to when did he resign as director and who replaced him?
- Likelihood is that the second defendant want to buy time and to delay this matter and has shown himself not have a bona fide defence.
- Second defendant's argument cannot be accepted and therefore rejected as such. The purpose of Summary Judgement will be defeated if leave is granted to the second defendant to defend.
- I find that the second defendant was part and parcel of the first defendant at the time when the professional services were rendered by the plaintiffs.
- I agree fully with the conclusion reached in the Bertelsmans case as confirmed by the Serrurier case of 2010 that plaintiff's have a

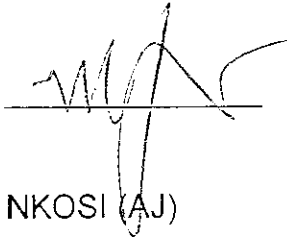
choice as who to sue in this regard. Services were rendered to the benefit of first and second defendant.

- I am further in agreement with the view taken in *Heddad v Livestock* 1961(2) WLD 362 that in the absence of notice a principal cannot, by any instruction to his agent escape liability for acts done by the agent which fall within the apparent scope of his authority.

Wilkins Attorneys carried out its mandate and briefed counsel who acted on behalf of first and second Defendant, who happened to have attended to court proceedings to their satisfaction. When they have to pay they disappear. Where is the bona fides?

- My findings is that:
 - (a.) Plaintiffs are entitled to sue first and second defendant each one paying the other to be absolved.
 - (b.) Further delays of this remedy, will frustrate putting into effect of such remedy.
 - (c.) The second defendant appearance to defend is aimed at delaying the process.
 - (d.) The second defendant has failed to show a bona fide defence to the case against the defendants and therefore his argument is rejected.

In the premises Summary Judgement is granted in accordance with the draft order.



NKOSI (AJ)

Date heard: 1 November 2012

Date of Judgment: 16 November 2012

1. On behalf of the Plaintiff:

1.1 ATTORNEYS:

Savage, Jooste & Adams Inc
141 Boshoff Street
Nieuw Muckleneuk
PRETORIA
Tel: 012- 452 8200
Ref: Mr JK Hendey/H071/12

1.2 COUNSEL:

Adv. G Naude

2. On behalf of the First Respondent

2.1 ATTORNEYS

Gerhard Truter Attorneys
608 Reitz Street
Sunnyside
PRETORIA
Tel.: 011 – 789 4598
Ref.: NK Botha/Y9097

2.2 COUNSEL:

Adv. N Alli


IN THE NORTH GAUTENG HIGH COURT, PRETORIA

REPUBLIC OF SOUTH AFRICA

Case no: 40439/12

In the matter between:

CEDRIC ELDRID PUCKRIN

1ST PLAINTIFF/APPLICANT

SONIKA MENTZ

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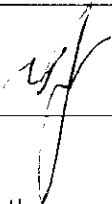
and

HACJ ACCOUNTING SOFTWARE
SERVICES (PTY) LTD

1ST DEFENDANT/RESPONDENT

HENDRIK ANDRÉ COETZEE

2ND DEFENDANT/RESPONDENT

 DRAFT ORDER

Having read the papers and heard counsel, the court grants the following order:

1. That summary judgment is granted against the Second Defendant jointly and severally with any order that may be granted against the First Defendant for:

- 1.1. payment to First Plaintiff in the amount of R116 280,00;

- 1.2. payment to the First Plaintiff of interest on the amount of R116 280,00 at 15.5% p.a. from the 28th of June 2010 to date of payment;
- 1.3. payment to Second Plaintiff in the amount of R108 500,00;
- 1.4. payment to the Second Plaintiff of interest on the amount of R108 500,00 at 15.5% p.a. from the 6th of May 2010 to date of payment;
- 1.5. Costs of the action as between attorney and client.

By order

THE REGISTRAR